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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

RICHARD JANDT, as Interim Trustee,
etc.,

Petitioner and Respondent,

v.

CHRISTOPHER ADAM JACKSON,

Objector and Appellant.

E070541

(Super.Ct.No. MCP1300789)

OPINION

APPEAL from the Superior Court of Riverside County. John G. Evans, Judge.
Affirmed.

Christopher Adam Jackson, in pro per., for Objector and Appellant.

No appearance for Petitioner and Respondent.

This is the second appeal by Christopher Adam Jackson¹ in an ongoing probate dispute that began over five years ago following the death of his mother, Sandra McCumber Jackson. In this appeal, Christopher challenges the trial court’s order approving the third account filed by the interim trustee, Richard Jandt.² We affirm the order.

BACKGROUND

A. The Trust and the Trust Dispute

Fredric Forbin Jackson and Sandra created The Jackson Family Trust (the trust) in January 1999. The trust was divided into three subtrusts, and the corpus of the trust was left to the settlors’ three children—Christopher, Jordan Beswick, and Rachel Gossett—in equal shares, subject to the surviving settlor’s power of appointment. Years after Frederic died in 2001, Sandra amended each of the three subtrusts to make Jordan and Rachel the exclusive beneficiaries and to remove Christopher as co-trustee of one of the subtrusts. Sandra died on October 16, 2013.

In December 2013, Jordan and Rachel filed a petition in probate court under Probate Code sections 850 and 17200, seeking to remove Christopher as co-trustee of all three subtrusts, to determine title to a residential property they alleged belonged to the trust, to recover other trust property, and to assess damages against Christopher.

¹ Because some of the parties to the probate dispute have the same last name, we refer to them by their first names in order to avoid confusion. No disrespect is intended.

² Jandt did not file a respondent’s brief, so we “decide the appeal on the record, the opening brief, and any oral argument by the appellant.” (Cal. Rules of Court, rule 8.220(a)(2).)

Christopher then filed an amended petition, challenging the validity of the amendments to the trust.

B. Interim Trustee

In January 2014, the court suspended the powers of all of the co-trustees and appointed Jandt as interim trustee. The suspended co-trustees and beneficiaries were ordered to return all trust assets to Jandt.

Several months later, in April 2014, Jandt petitioned the court for instructions about whether he should commence an action under Probate Code section 850 to recover trust assets that had not been returned to him. The court instructed Jandt to “remain neutral as to litigation between the parties and not [to] join in existing [Probate Code section] 850 petition, nor initiate any new action.”

In September 2014, Jandt notified the court that his professional fiduciary license was set to expire at the end of the month. He indicated that at the time he was acting as the trustee for the Cantor Trust, the May Trust, and the Jackson Trust but had petitioned to resign from the Cantor Trust with a hearing on that petition scheduled for October 3, 2014. Christopher filed numerous subsequent objections to Jandt acting as interim trustee.

*C. Interim Trustee's Third Account*³

On June 19, 2017, Jandt petitioned the court for approval of the third account of the trust for the period between February 1, 2016, and April 30, 2017. Jandt sought approval of his actions during that period, requested trustee fees and attorney fees, and sought an increase in the amount of the bond. Jandt's supplement to that account, filed July 14, 2017, focused on actions taken in Christopher's concurrent bankruptcy court proceedings and sought modification of the June 2014 order instructing Jandt not to initiate any new actions. Jandt's account showed that the value of the trust assets at the end of the accounting period on April 30, 2017, had increased to \$871,440.22, so Jandt sought to increase his bond. Jandt sought fees for his services in the amount of \$5,592.60 and sought an additional \$327.79 for costs. He further sought attorney fees totaling \$34,045 for two separate attorneys who had rendered services to Jandt, as trustee, and the estate. A hearing was initially set for August 14, 2017.

D. Christopher's Objections

Christopher filed an initial objection to the third account on July 31, 2017, and an amended objection on August 30, 2017. In November 2017, Christopher moved for summary judgment on the petition to approve the third account. On January 11, 2018, Jandt opposed the motion, arguing that it had not been timely filed and served before the contested hearing date, which at that time was scheduled for February 13, 2018.

³ Many of Christopher's challenges focus on putative defects in the process resulting in the court's approval of the third account. Our description of the facts, therefore, emphasizes the facts relevant to that process, including the dates of particular filings, as relevant.

Christopher moved to continue the hearing on his motion for summary judgment to allow him time to properly serve the motion. That request was denied on January 18, 2018.⁴ The next day, Jandt refiled his opposition to the motion for summary judgment, arguing again that the motion had been untimely filed and served.

On January 23, 2018, Christopher filed an ex parte motion to vacate the February 13, 2018, trial date and continue the trial for six months. On January 25, 2018, the court denied the motion, finding “no good cause exist[ed] to continue trial nor to hear this motion on an ex parte basis.” On February 7, 2018, Christopher filed another ex parte motion, seeking the same relief.

Without any citation to the record, Christopher states in his opening brief that “[a]t a later date, the trial court vacated the trial date.” On March 6, 2018, Christopher refiled and served a motion for summary judgment that was identical to the one he had filed in November. Jandt did not file an opposition (or it was not provided in the record on appeal). A hearing on the motion was scheduled for May 30, 2018.

On April 13, 2018, the court denied Christopher’s ex parte request to vacate the April 16, 2018, trial date “in the interest of justice.” Based on the trial court’s refusal to vacate the trial date, later that day Christopher filed an ex parte statement to disqualify the trial judge, which the judge denied the same day, noting that it was the fifth statement of disqualification filed by Christopher.

⁴ In his opening brief, Christopher cites the order denying the continuance request for the summary judgment hearing erroneously as standing for the proposition that, “The Probate Court then denied [Christopher’s motion for summary judgment] on 1/18/2018.”

E. Approval of Third Account

The trial on the third account proceeded on April 16, 2018. Christopher did not attend. Jandt was called as a witness and testified about the actions he had taken as interim trustee during the accounting period. The court found true the allegations contained in the petition for settlement of the third account and the supplemental petition, and the court approved the third account as filed. The court increased the bond as requested, ordered compensation paid to Jandt and the two attorneys, and clarified that the June 2014 order instructing Jandt to remain neutral in the Probate Code section 850 litigation between the parties did “not *prohibit* the Interim Trustee from taking actions to marshal, maintain, and protect trust assets, including, if he so determines, filing or asserting [a] creditor’s claim in bankruptcy.” At the conclusion of the hearing on the petition to approve the third account, the court declined to deny as moot Christopher’s pending motion for summary judgment.

Christopher timely appealed from the order of April 16, 2018.

DISCUSSION

A. Appealability

In a dispute over a trust, “the Probate Code provisions concerning appealability are exclusive.” (*Kalenian v. Insen* (2014) 225 Cal.App.4th 569, 575; see also Code Civ. Proc., § 904.1, subd. (a)(10) [an appeal may be taken from any order made appealable by the Probate Code].) Orders, like the one at issue here, “[a]uthorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary” are made expressly appealable by the Probate Code. (Prob. Code, § 1300, subd. (c).) Similarly,

orders allowing payment of compensation or expenses of an attorney and a fiduciary are also appealable. (Prob. Code, § 1300, subds. (e), (f).) The April 16, 2018, order approving the third account, clarifying instructions to Jandt, and allowing fees to be paid to him and the two attorneys who had been employed on behalf of the trust is therefore appealable.

B. Christopher's Burden on Appeal

We begin our analysis with a brief discussion of relevant appellate rules and procedures. An appealed order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “[A]ll intendments and presumptions are indulged in favor of its correctness.” (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Appellants, even those representing themselves, have the burden of demonstrating reversible error by providing an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Huang v. Hanks* (2018) 23 Cal.App.5th 179, 183 & fn. 1.) “[A]n appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his claim. The appellant must present an adequate argument including citations to supporting authorities and to relevant portions of the record.” (*Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 162.)

Christopher’s opening brief is replete with violations of the California Rules of Court⁵ that have affected our ability to address the merits of this appeal, including failure to cite the record for factual assertions, references to facts outside of the record, failure to

⁵ All further references to the rules are to the California Rules of Court.

support each point with legal argument, and failure to state each point under a separate heading. (Rule 8.204(a)(1)(B)-(C), (b)(4).) While it would be well within our discretion to strike the brief for noncompliance and grant leave to file a new one (rule 8.204(e)(2)(B)), we refrain from doing so in the interest of judicial economy.

We will, however, strictly adhere to the rules of appellate practice and procedure and address only those issues properly raised. Our review typically is guided by the headings in the argument section of the opening brief. (Rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.) The opening brief here, however, does not contain separate headings or subheadings summarizing each point. (Rule 8.204(a)(1)(B).) Instead, the headings are “1st Argument,” “2nd Argument,” and so forth, each of which is followed by an indented paragraph generally describing the numerous arguments in the section. Although those paragraphs do not technically constitute headings under the rules of court, we liberally construe them as such because we otherwise would not have any issues to review. We disregard any legal arguments (and there are many) that are not clearly identified in these headings (*Opdyk, supra*, at p. 1830, fn. 4), are not supported by legal arguments (*People v. Stanley* (1995) 10 Cal.4th 764, 793), or are not supported by citations to the record (*Regents of University of California v. Sheily* (2004) 122 Cal.App.4th 824, 826-827 & fn. 1). Our analysis is limited to addressing only those legal arguments that appear in a heading or subheading that we have identified as being supported by at least some sort of legal argument.

C. Continuance of Summary Judgment

Christopher contends that the trial court abused its discretion by not considering his motion for summary judgment before the trial on the third account, resulting in a putative denial of his right to due process. Christopher has failed to provide an adequate record for us to evaluate this issue.

Because the record contains two separate, yet identical, motions for summary judgment filed by Christopher—one filed in November 2017 and one filed in March 2018, we must determine which motion Christopher’s argument addresses. Although Christopher does not expressly state that it is the second motion that the trial court should have considered before trial, he implies as much. Christopher claims that the initial motion was “denied without prejudice,” and that he then refiled “the same Notice of Motion and Motion for Summary Judgment.” The purported order denying the initial motion, however, is not included in the record. He then states that the motion for summary judgment that the trial court should have entertained was the motion that “was on calendar to be heard on May 30, 2018,” which was the motion filed in March 2018.

Indulging every presumption in favor of the trial court’s order approving the third account, we assume that Christopher’s initial motion for summary judgment was denied. Otherwise, assuming for the sake of argument that the motion was timely filed and served, the trial court could not have proceeded to trial with the November 2017 motion for summary judgment pending. (*Sentry Ins. Co. v. Superior Court* (1989) 207 Cal.App.3d 526, 529 [“A trial court may not refuse to hear a summary judgment motion filed within the time limits of [Code of Civil Procedure] section 437c.”].)

Because the March 2018 motion was identical to the November 2017 motion, it constituted a motion for reconsideration of the denial of the November 2017 motion. Section 1008, subdivision (a) of the Code of Civil Procedure sets forth the procedure for motions for reconsideration. Such a motion must be filed “within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law.” “Section 1008 is designed to conserve the court’s resources by constraining litigants who would attempt to bring the same motion over and over.” (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1157.)

We cannot determine whether the March 2018 motion was timely under section 1008 of the Code of Civil Procedure because the record does not include the order denying the November 2017 motion. Consistent with our obligation to presume the correctness of the order under review, we must presume that the March 2018 motion was not timely filed. The court therefore was not obligated to entertain the March 2018 motion before proceeding to trial.⁶ We also note that the March 2018 motion was identical to the November 2017 motion and thus was not “based upon new or different facts, circumstances, or law,” as required for a court to reconsider a motion under section 1008 of the Code of Civil Procedure.

⁶ We recognize that in *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1015, the court held that section 1008 of the Code of Civil Procedure was inapplicable when the first motion was denied without prejudice. Again, the record on appeal does not contain the order denying the November 2017 motion, so we cannot determine whether the denial was without prejudice. The record therefore provides no basis for us to apply *Farber*.

Because Christopher has failed to provide an adequate record to demonstrate error, we must reject his argument. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.)

D. Continuance to File Writ Petition

Christopher contends that the trial court abused its discretion by failing to continue the trial to allow him time to seek extraordinary writ relief in this court from the trial court's denial of his application to disqualify the trial judge. This contention has no merit.

"A party seeking a continuance of the date set for trial . . . must make the request for a continuance by a noticed motion or an ex parte application . . . as soon as reasonably practical once the necessity for the continuance is discovered." (Cal. Rules of Court, rule 3.1332(b).)

There is nothing in the record on appeal indicating that Christopher asked the trial court to continue the trial date *after* the statement of disqualification was denied. Courts do not have a sua sponte obligation to continue the trial date. (See *People v. Medina* (1995) 11 Cal.4th 694, 739 [not error to fail to continue trial sua sponte].) We conclude that the trial court did not abuse its discretion by failing sua sponte to continue the trial date on the third account to allow Christopher to seek relief from this court by way of extraordinary writ.

E. Professional Fiduciary

Christopher contends that the trial court abused its discretion by approving the third account because Jandt was not a licensed professional fiduciary. This contention lacks merit.

A person who acts as a trustee is considered a professional fiduciary if the person “acts as a trustee . . . for more than three individuals, at the same time.” (Bus. & Prof. Code, § 6501, subd. (f)(2).) For purposes of counting individuals, “[a]ll individuals who are related to each other shall be counted as one individual” and “trustors who are related to each other shall be counted as one individual.” (Bus. & Prof. Code, § 6501, subds. (f)(2)(B) & (C).)

Here, in Jandt’s declaration supporting the petition for approval of the third account, he explained that he did not renew his professional fiduciary license after it expired in September 2014. He explained that at the time, in June 2017, he was acting as a court-appointed trustee in two matters and acting as a non-court-appointed trustee for one other trust. The purported beneficiaries of the trust here are all related and count as one individual. There is no information in the record about the number of individuals involved in the other two trusts. Jandt was only required to be licensed as a professional fiduciary if he was acting as a trustee for more than three individuals at the same time. (Bus. & Prof. Code, § 6501, subd. (f)(2).) Because we must presume the correctness of the court’s order, we presume that Jandt was acting as trustee for three or fewer individuals and not required to be licensed as a professional fiduciary.

F. Format of Accounting

Christopher contends that the format of the third account did not comply with Probate Code section 1060. We reject this contention. The third account includes the requisite financial statement in the summary format mandated by Probate Code section 1061, subdivision (b). Contrary to Christopher’s contention, the summary includes a

schedule of receipts—i.e., the amount of money received by the trust during the accounting period—as required by Probate Code section 1062, subdivision (a). To the extent Christopher is complaining that the third account was defective because it was not accompanied by physical receipts of transactions (like cash register receipts), such as “invoices, bank statements, itemized billing statements, including attorney’s itemized billing statements,” the supporting documentation was not required to be filed along with the third account. Christopher cites no authority to the contrary.

G. Breach of Fiduciary Duty

Christopher contends that Jandt has treated Christopher unfairly and thus breached his duty to deal impartially with beneficiaries, so the trial court erred in approving the third account. We reject this contention.

Trustees owe all beneficiaries a fiduciary duty. (*Hearst v. Ganzi* (2006) 145 Cal.App.4th 1195, 1208.) “The fiduciary duty of a trustee includes ‘the duty of loyalty (Prob. Code, § 16002); the duty to deal impartially with the beneficiaries (Prob. Code, § 16003); the duty to avoid conflicts of interest (Prob. Code, § 16004); the duty to control and preserve trust property (Prob. Code, § 16006; Rest.2d Trusts, §§ 175, 176); the duty to make trust property productive (Rest.2d Trusts, § 181); the duty to dispose of improper investments (Rest.2d Trusts, §§ 230, 231); and the duty to report and account (Prob. Code, § 16060).’” (*Hearst, supra*, at p. 1208, italics omitted.) “The beneficiary of the trust has the initial burden of proving the existence of a fiduciary duty and the trustee’s failure to perform it; the burden then shifts to the trustee to justify its actions.” (*LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517.)

In support of the contention that Jandt has treated Christopher unfairly, Christopher claims that Jandt (1) assisted “in concealing the facts of The Last Will and Testament of Sandra, secretly deposited in a different court”; (2) “illegally” evicted Christopher and Chapter Jackson from a residential property; (3) committed the crimes of “residential burglary and invasion of privacy”; (4) “initiate[d] new litigation, join[ed] into the [Probate Code section] 850 Petition against the beneficiary Christopher”; and (5) filed an adverse claim against Christopher in a bankruptcy proceeding. These contentions amount to nothing more than unsupported conclusory allegations. The record on appeal contains no evidence substantiating any of these claims. Christopher did not even attend (and hence presented no evidence at) the contested hearing. We therefore conclude that Christopher failed to carry his burden of proving that Jandt breached his fiduciary duty.

DISPOSITION

We affirm the trial court’s April 16, 2018, order approving the interim trustee’s third account. Jandt is entitled to costs of appeal.

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MENETREZ
J.

We concur:

RAMIREZ
P. J.

MILLER
J.